

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

DEC 17 2007

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

COLIN WILLIAM SMITH,

Defendant - Appellant.

No. 06-30220

D.C. No. CR-05-00031-RFC

MEMORANDUM^{*}

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, District Judge, Presiding

Submitted December 13, 2007^{**}
Seattle, Washington

Before: FISHER and TALLMAN, Circuit Judges, and EZRA^{***} District Judge.

Colin Smith appeals the sentence imposed after he pled guilty to six counts of distributing a controlled substance in violation of 21 U.S.C. § 841(a)(1). Under

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

^{***} The Honorable David A. Ezra, United States District Judge for the District of Hawaii, sitting by designation.

United States v. Mohamed, 459 F.3d 979, 987 (9th Cir. 2006), we do not determine whether the district court correctly applied a departure provision to a post-*Booker* sentence, we simply review the sentence for reasonableness under an abuse-of-discretion standard. *See Gall v. United States*, 552 U.S. ___, ___, No. 06-7949, slip op. 2, 18, 21 (2007) (holding that the court of appeals reviews all sentences, whether inside or outside the guideline range, for an abuse of discretion). Here, the district court correctly determined the applicable guideline range. Moreover, the court expressly considered the factors set forth in 18 U.S.C. § 3553(a), and clearly articulated its reasons for imposing the 120-month sentence on the record. *See Gall*, 552 U.S. at ___, slip op., at 7 (“[A] district judge must give serious consideration to the extent of any departure from the Guidelines and must explain his conclusion that an unusually lenient or an unusually harsh sentence is appropriate in a particular case with sufficient justifications.”). Given Smith’s extensive criminal history and the likelihood of recidivism, we cannot say that the sentence was unreasonable.

AFFIRMED.